

ORIGINAL

(S E R V E D)
(June 25, 2001)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 01-07

TIGNES INC. - APPLICATION FOR A LICENSE AS AN
OCEAN TRANSPORTATION INTERMEDIARY

ORDER OF INVESTIGATION AND HEARING

Tignes Inc., a Florida corporation, has submitted an application for a license as an Ocean Transportation Intermediary ("OTI") to operate as a Non-Vessel Operating Common Carrier ("NVOCC"). Sergio Lemme is identified in the application as Tignes' Qualifying Individual, as well as its President and sole owner.

Sergio Lemme is/was also president of GSTAAD Inc. ("GSTAAD") owning 50 percent of the company with his wife owning the other 50 percent. On July 10, 2000, Sergio Lemme as President of GSTAAD, signed a Settlement Agreement in Docket No. 99-20, *GSTAAD Inc. And Sergio Lemme Possible Violations of Section 10(a)(1) of The Shipping Act of 1984*, admitting knowing and willful violations of section 10 (a)(1) of the Shipping Act of 1984, 46 U.S.C. app. § 1709(a)(1), by obtaining transportation for less than the applicable tariff or service contract rates from ocean carriers through the device or means of receiving unlawful rebates and other freight rate concessions and by allowing other shippers to make shipments under GSTAAD service contracts, even though GSTAAD performed no transportation function nor assumed any NVOCC obligation with respect to those shipments.

In addition to a payment of \$150,000, GSTAAD agreed to cancel all of its NVOCC tariffs and NVOCC bonds, surrender its OTI license and terminate all activities in ocean transportation. The Settlement Agreement was approved by the Administrative Law Judge on August 1, 2000 and became administratively final on September 5, 2000.

Information has been developed by the Commission's staff indicating that, notwithstanding Mr. Lemme's representations as President, GSTAAD continued to hold out as an NVOCC after signing the settlement and its approval by the Administrative Law Judge. In addition, information has been developed that Southern Group, Inc. ("Southern Group"), of which Mr. Lemme is President and an owner, appears to be operating, or has provided services, as an unlicensed OTI through the use of the OTI license of Central Agency of Florida, Inc. ("Central"). Southern Group is named in Tignes' OTI application and in Central's OTI application as providing financial assistance to each of them. Tignes, Southern Group and Central also appear to share the same offices, though Tignes, in its OTI application, indicated it would not share, nor intended to share, office space or expenses with any other person or entity.

Section 19(a) of the Shipping Act of 1984, 46 U.S.C. app. §1718(a), provides in pertinent part that:

The Commission shall issue an intermediary's license to any person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

Section 5 15.11 (a), 46 CFR §5 15.11 (a), of the Commission's regulations governing eligibility and procedures for licensing as an OTI provides, in pertinent part:

(a) *Necessary qualifications.* To be eligible for an ocean transportation intermediary license, the *applicant must demonstrate* to the Commission that:

(1) It possesses the necessary experience. . . , and *the necessary character* to render ocean transportation intermediary services. . . .

(Emphasis added).

Section 5 15.13 of the Commission's regulations, 46 CFR §5 15.13, provides:

The Commission shall conduct an investigation of the applicant's qualifications for a license. Such investigation may address:

- (a) The accuracy of the information submitted in the application;
- (b) The integrity and financial responsibility of the applicant;
- (c) The character of the applicant and its qualifying individual; and
- (d) The length and nature of the qualifying individual's experience in handling ocean transportation intermediary duties.

Commission staff conducted an investigation as provided for in section 515.13 of its regulations and found that neither Tignes nor Mr. Lemme has the necessary character to perform OTI services. This determination was based on Mr. Lemme's admitted Shipping Act violations as owner and operator of GSTAAD, indications that GSTAAD continued to solicit new business after approval of the settlement agreement by the ALJ in Docket No. 99-20, Mr. Lemme's apparent operation of Southern Group to provide NVOCC services without a license and his making materially false and misleading statements with respect to Tignes' OTI application. A letter of intent to deny was sent by the Commission to Tignes on April 30, 2001 pursuant to section 5 15.15(c), 46 CFR §5 15.15(c). As entitled pursuant to section 5 15.15(c), Tignes, through counsel, has requested a hearing on the proposed denial of its application.

NOW THEREFORE, IT IS ORDERED That, pursuant to sections 11 and 19 of the Shipping Act of 1984, 46 U.S.C. app. §§1710 and 1718, and section 515.15 of the Commission's regulations, 46 CFR §5 15.15, a proceeding is hereby instituted to determine whether Tignes Inc. is qualified by experience and character to render ocean transportation intermediary services;

IT IS FURTHER ORDERED, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges in compliance with Rule 61 of the Commission's Rules of Practice and

Procedure, 46 CFR \$502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

IT IS FURTHER ORDERED That, Tignes Inc. be made Respondent in this proceeding;

IT IS FURTHER ORDERED That the Commission's Bureau of Enforcement be made a party to this proceeding;

IT IS FURTHER ORDERED, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

IT IS FURTHER ORDERED, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR \$502.72;

IT IS FURTHER ORDERED, That all further notices, orders and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on all parties of record;

IT IS FURTHER ORDERED, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR \$502.118, and shall be served on all parties of record; and

IT IS FURTHER ORDERED, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by June 25, 2002, and the final decision of the Commission shall be issued by October 23, 2002.

By the Commission.

A handwritten signature in black ink, appearing to read "BL VanBrakle". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Bryant L. VanBrakle
Secretary

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DOCKET NO. 01-07

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Notice is given that on June 25, 2001, the Federal Maritime Commission served an Order of Investigation to determine whether Tignes, Inc. is qualified by the experience and character standards of Section 19 of the Shipping Act of 1984 to be licensed to render services as an Ocean Transportation Intermediary ("OTI").

Tignes submitted an application for a license as an OTI to operate as a Non-Vessel Operating Common Carrier ("NVOCC"). Sergio Lemme is identified in the application as Tignes' Qualifying Individual, as well as its President and sole owner. On April 30, 2001, the Commission sent a letter of intent to deny the license application to Tignes pursuant to 46 C.F.R. § 5 15.15. The letter of intent to deny was based upon a staff determination that Tignes and Mr. Lemme did not have the experience or character necessary to perform OTI services. The staff made this determination based on admitted violations of the 1984 Act in FMC Docket No. 99-20, GSTAAD, Inc. and Sergio Lemme Possible Violations of Section 10(a)(1) of the Shipping Act of 1984, and indications that GSTAAD, continued to solicit new business after approval of the settlement agreement by the ALJ in Docket No. 99-20. The staff also found indications that Southern Group, of which Mr. Lemme is President and Owner, provided NVOCC services without a license and that materially false and misleading statements were made with respect to Tignes' OTI application. As entitled by 46 C.F.R. § 5 15.15, Tignes, through counsel, requested a hearing on the proposed denial of its license application. The Commission issued the Order of

Investigation in Docket No. 01-07 in response to this request. The full text of the Commission's Order of Investigation can be found on the Commission's homepage at www.fmc.gov.



Bryant L. VanBrakle
Secretary